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SAN MATEO COUNTY

FEB 01 2019

Clerk of the Superior Court

By

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19 - CIV - 00708
CMP
Complaint
1629898



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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

(Unlimited Jurisdiction)

NOHA CARRINGTON

Plaintiff,

vs.

**UPLIFT, INC., BRIAN BARTH, ROBERT
SODERBERY AND DOES 1-100,**

Defendants.

Case No.:

19CIV00708

COMPLAINT

BY FAX

1. Sex Discrimination
2. Sex Harassment – Hostile Work Environment
3. Wrongful Termination in Violation of Public Policy
4. Retaliation
5. Fraud
6. Breach of the Implied Covenant of Good Faith and Fair Dealing

JURY TRIAL DEMAND

1 Plaintiff Noha Carrington brings this complaint against defendants UpLift, Inc., Brian
2 Barth, Robert Soderbery, and Does 1–100 as follows:

3 **PARTIES**

4 1. Plaintiff Noha Carrington (“Carrington”) is a resident of Menlo Park, San Mateo
5 County, California. Ms. Carrington is a former employee of defendant UpLift, Inc.

6 2. Defendant UpLift, Inc. (“UpLift”) is a Delaware corporation with its principal
7 place of business in Menlo Park, San Mateo County, California. UpLift is generally in the
8 business of extending credit (loaning money) to travelers for their travels. UpLift regularly
9 employed more than 15 employees at all times relevant to this complaint.

10 3. Defendant Brian Barth is the founder, principal owner and Chief Executive
11 Officer (“CEO”) of defendant UpLift.

12 4. Defendant Robert Soderbery is a resident of Silicon Valley, California, and the
13 president of defendant UpLift.

14 5. Defendant Does 1–100 are currently unknown individuals and entities involved in
15 the wrongdoing alleged in this complaint. When plaintiff determines the identities of the Doe
16 defendants, plaintiff will amend this complaint so that the Doe defendants are properly
17 identified.

18 **VENUE**

19 6. Venue is proper in San Mateo County, California because defendant UpLift’s
20 headquarters and principal places of business is in San Mateo County, California.

21 **FACTS**

22 **Background**

23 7. Ms. Carrington first began working for UpLift in April 2017, through her
24 consulting firm. She functioned as UpLift’s Chief Financial Officer (“CFO”) during the
25 “consulting” period.

26 8. Ms. Carrington was “officially” hired as UpLift’s CFO on September 22, 2017.

27 9. In April 2018, driven by discriminatory animus, a need to sexually harass and
28 retaliatory desires, as further described below, UpLift and UpLift CEO Barth *demoted* Ms.

1 Carrington to Chief Capital Officer (“CCO”) and took away all of her responsibilities, except for
2 capital markets. Among other things, Mr. Barth took away Ms. Carrington’s financial,
3 fundraising and credit and compliance responsibilities.

4 10. Ms. Carrington served as UpLift CCO until September 5, 2018, when UpLift
5 wrongfully terminated her employment.

6 11. As CFO, Ms. Carrington was responsible for all of UpLift’s finances, fundraising,
7 and capital markets. In addition, human resources, customer service, and compliance reported to
8 Ms. Carrington.

9 12. As *demoted* CCO, Ms. Carrington was responsible only for leading UpLift’s
10 capital markets group and customer service (not credit, not risk, not fund raising, and not
11 compliance). Despite the sex harassment, sex discrimination and retaliatory conduct being
12 visited on her, on behalf of UpLift, Ms. Carrington leveraged her contacts with debt and equity
13 investors and her extensive experience in global capital markets. Ms. Carrington accomplished
14 two debt financing deals during her tenure with UpLift and initiated UpLift’s first financial audit
15 by Price Waterhouse as well as regulatory and compliance reviews.

16 13. Some of CCO Carrington’s successes include: negotiating a deal with Fortress for
17 a debt facility agreement containing significantly more advantageous terms than previously
18 offered; procuring a letter of intent from MetaBank to originate loans to be kept on the balance
19 sheet with lucrative terms, and; negotiating a strategic investment of \$10 million structured as
20 convertible debt with Synchrony in order to cover UpLift’s cash shortage.

21 14. During 2017, UpLift granted Ms. Carrington (directly or via her consulting
22 company) two options to acquire, in the aggregate, 1,650,000 shares of UpLift Common Stock.

23 **UpLift, CEO Barth and President Soderbery Force Ms. Carrington to Work in a**
24 **Hostile Work Environment and UpLift Sexually Discriminates Against Ms. Carrington**

25 15. From the time Ms. Carrington was hired as UpLift’s CFO until the termination of
26 her employment, Ms. Carrington was repeatedly mistreated by UpLift, CEO Barth and president
27 Soderbery because she is a woman. Ms. Carrington was the lone female executive at UpLift.

28 16. UpLift’s male executives did not know how to interact with Ms. Carrington

1 because, in their eyes, she was not the “right” kind of female. These executives wanted a docile
2 woman to kowtow to their dictates. Ms. Carrington, however, was a strong leader.

3 17. Ms. Carrington’s forthrightness and confidence in her business judgment and
4 financial acumen threatened her male colleagues. Instead of implementing Ms. Carrington’s
5 ideas and proposals, UpLift’s male executives *repeatedly chastised* Ms. Carrington. CEO Barth
6 and president Soderbery blamed Ms. Carrington for their own failures to relate to a female
7 leader.

8 18. CEO Brian Barth and president Rob Soderbery both created a hostile work
9 environment and discriminated against Ms. Carrington because she is female. President
10 Soderbery took repeated steps to isolate Ms. Carrington within the organization, and frequently
11 undermined her ability to execute her job duties.

12 19. The repeated chastisement and isolation CEO Barth and president Soderbery
13 visited on Ms. Carrington created the hostile work environment. The two executives conducted
14 themselves vis-à-vis Ms. Carrington outside the scope of necessary job performance, and did so
15 out of meanness and bigotry, and for other personal motives. Their conduct created an abusive
16 working environment that no woman should have to put up with.

17 20. As one example, Ms. Carrington’s experience and financial insight were
18 continually challenged by both CEO Barth and president Soderbery, and her input regularly
19 ignored at group staff meetings. However, when a male colleague provided the same or similar
20 ideas, his input was praised. As time went on, Ms. Carrington was excluded from high-level
21 male-only meetings. President Soderbery deflected his inability to work with females by
22 explaining to Ms. Carrington that CEO Barth has problems working with women.

23 21. As a second example, over time, Ms. Carrington’s responsibilities were
24 diminished, and employees who would normally report to Ms. Carrington’s position were instead
25 instructed to report directly to president Soderbery or another executive. CEO Barth raised
26 frequent concerns over Ms. Carrington’s personal skills, a criticism that was not made to her
27 male colleagues. UpLift eventually demoted Ms. Carrington as described above.

28 22. As a third example, Ms. Carrington hired Ben Beinecke in November 2017 to

1 report directly to her. Almost immediately, president Soderbery interdicted the reporting
2 relationship.

3 23. As a fourth example, UpLift's male executives compelled Ms. Carrington to seek
4 training from an executive coach because, they said, she needed "to learn how to conduct herself
5 properly in the work environment."

6 24. Ms. Carrington successfully completed the coaching. The Company-appointed
7 coach complimented Ms. Carrington's ability to receive personal and professional feedback and
8 to communicate and relate to colleagues, superiors and direct reports. In addition, the coach
9 criticized UpLift's male executives on numerous occasions. The coach was surprised that UpLift
10 terminated Ms. Carrington's employment.

11 25. As a fifth example, UpLift did not pay Ms. Carrington the amount it promised to
12 pay her. When Ms. Carrington was hired, she agreed to a modest annual salary of \$50,000
13 because she was assured by president Soderbery that her annual salary would be increased to
14 \$250,000 immediately after the closing of UpLift's Series B Financing.

15 26. After Ms. Carrington formally took the UpLift job on September 22, 2017,
16 president Soderbery repeatedly assured Ms. Carrington that her annual salary would be increased
17 to \$250,000 immediately after the closing of UpLift's Series B Financing. UpLift's Series B
18 Financing closed in December 2017, but UpLift never raised Ms. Carrington's salary. However,
19 UpLift paid other senior managers, all of whom are male, as much as \$225,000 in annual salary.

20 **UpLift Fails to Investigate Ms. Carrington's**
21 **Complaints of Hostile Work Environment and Sex Discrimination**

22 27. On or about August 2018, Ms. Carrington complained to Traci Oberman in
23 UpLift HR about the hostile work environment and sex discrimination she was facing at UpLift.
24 Neither UpLift nor Ms. Oberman investigated. Nothing was done because Mr. Barth is UpLift's
25 founder, CEO, and controlling shareholder, and president Soderbery his right-hand man.

26 **Ms. Carrington Objects to UpLift's Commission of Securities Fraud**

27 28. In approximately April 2018, CEO Barth complained to the executive coach that
28 Ms. Carrington had not raised sufficient investor funds on behalf of UpLift. Raising capital was

1 not one of Ms. Carrington's responsibilities after her demotion.

2 29. Ms. Carrington explained to CEO Barth that even if raising capital had been her
3 responsibility, she could not do so because UpLift's credit policy was to lend to borrowers with a
4 minimum FICO credit score of 475. Ms. Carrington explained that she was uncomfortable
5 soliciting investors to a company lending to those with such a low FICO score.

6 30. In response, president Soderbery raised UpLift's minimum FICO credit rating to
7 525, but he never explained to Ms. Carrington or to any of the investors he was doing so as a
8 fraudulent maneuver to raise funds, and that he planned to reduce the FICO lending minimum
9 back to 475 after the investors' money was in the bank.

10 31. Ms. Carrington – who was unaware of UpLift's fraud – promptly raised for UpLift
11 from a number of investors she knows approximately \$5,000,000 of the \$18,000,000 in new
12 capital raised.

13 32. Approximately one week after UpLift received the investors' funds, president
14 Soderbery completed his and UpLift's fraud by lowering UpLift's lending limit back to those
15 with FICO scores of 475. Ms. Carrington discovered this subterfuge in early June 2018, and only
16 as a result of being cc'd (probably accidentally) on an email.

17 33. Ms. Carrington immediately complained to CEO Barth and president Soderbery
18 about UpLift's securities fraud. Nothing was done while Ms. Carrington was employed to
19 address Ms. Carrington's complaint, other than a campaign of retaliation which ultimately led to
20 the termination of her employment. CEO Barth told Ms. Carrington that she is not a team player.

21 **Ms. Carrington Objects to UpLift's Violation of Regulation E**

22 34. On multiple occasions, Ms. Carrington reported UpLift's failure to comply with
23 Regulation E ("Reg. E") of the United States Electronic Funds Transfer Act ("EFTA"). Ms.
24 Carrington reported the violation to CEO Barth and president Soderbery, among others.

25 35. For example, in September 2017, Ms. Carrington advised CEO Barth, president
26 Soderbery and others that UpLift was violating Reg E, and UpLift should immediately correct
27 the violations. UpLift did nothing. As another example, in July 2018, Ms. Carrington again
28 advised CEO Barth that UpLift was violating Reg. E.

1 **CEO Barth Becomes Enraged with Ms. Carrington**

2 36. CEO Barth was irate in July 2018 that a woman dared to re-visit UpLift's Reg. E
3 violation when he had decided to do nothing about it. CEO Barth demanded an explanation about
4 the violation, which Ms. Carrington provided.

5 37. CEO Barth was so enraged that Ms. Carrington had told him that UpLift must
6 follow the law that he went so far as to blame Ms. Carrington for the non-compliance, even
7 though compliance was not her responsibility in July 2018 (compliance was the responsibility of
8 then-compliance officer Alexandria Cronin, who reported to another executive).

9 38. Several times, CEO Barth and president Soderbery told Ms. Carrington to stay in
10 her lane, focus on capital markets strategies and not concern herself with Reg E.

11 39. Following Ms. Carrington's reports of the securities fraud and the Reg E
12 violations, CEO Barth, president Soderbery, and UpLift ratcheted up their retaliation. In addition
13 to the previous exclusion, hostile work environment and discrimination directed towards Ms.
14 Carrington, CEO Barth became even more critical of Ms. Carrington, including going so far so to
15 nitpick spelling in emails, something never directed towards the other male executives at UpLift.
16 CEO Barth also engaged in an email campaign in an attempt to paper over his discriminatory and
17 harassing conduct and in an attempt to protect UpLift against Ms. Carrington's reports of
18 UpLift's wrongful conduct.

19 40. Ultimately, enraged CEO, founder and controlling shareholder Barth terminated
20 Ms. Carrington's employment on September 5, 2018. UpLift's termination was the direct result
21 of Ms. Carrington's sex and Ms. Carrington's reporting of UpLift's securities fraud and its
22 violation of Reg. E.

23 **UpLift Admits Its Securities Fraud and Arranges for Investors to Recover Their Funds**

24 41. In or about November or December 2018, UpLift arranged for approximately four
25 of the investors who had been victimized by UpLift's securities fraud to recover their funds.
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FIRST CAUSE OF ACTION

Sex Discrimination – Violation of Cal Government Code § 12940 et seq.

(Against UpLift, Inc.)

42. Plaintiff realleges and incorporates by reference paragraphs 1 through 41 above.

43. As described more fully above, UpLift discriminated against Ms. Carrington in employment, and ultimately terminated Ms. Carrington's employment because Ms. Carrington is a woman. UpLift's conduct violated California law, including, without limitation, the proscriptions against sex discrimination in California's Fair Employment and Housing Act.

44. As described more fully above, UpLift failed to investigate Ms. Carrington's complaint of sex discrimination and harassment. UpLift's conduct violated California law.

45. A Department of Fair Employment and Housing ("DFEH") right-to-sue letter is attached as Exhibit 1 to this complaint.

46. UpLift's conduct has damaged Ms. Carrington in an amount to be proven at trial, which amount includes the loss of wages and equity.

47. UpLift conducted itself maliciously, fraudulently, oppressively, and in bad faith with respect to Ms. Carrington. Therefore, Ms. Carrington is entitled to an award of exemplary and punitive damages against UpLift in an amount to be determined at trial.

SECOND CAUSE OF ACTION

Sex Harassment – Hostile Work Environment

(Against UpLift, Inc., Brian Barth and Robert Soderbery)

48. Plaintiff realleges and incorporates by reference paragraphs 1 through 47 above.

49. As described more fully above, Ms. Carrington was forced to endure a hostile work environment during her employment because she is a woman, and more specifically, because in eyes of UpLift's most senior executives, she is the "wrong kind of woman." UpLift's conduct violated California law, including, without limitation, the proscriptions against sexual harassment and hostile work environments in California's Fair Employment and Housing Act.

50. As described more fully above, UpLift failed to investigate Ms. Carrington's complaint of sex discrimination and harassment. UpLift's conduct violated California law,

1 including the requirement in California's Fair Employment and Housing Act that employers
2 investigate their employee's claims of sex discrimination and harassment.

3 51. A DFEH right-to-sue letter is attached as Exhibit 1 to this complaint.

4 52. UpLift's, CEO Barth's and president Soderbery's conduct has damaged Ms.
5 Carrington in an amount to be proven at trial, which amount includes the loss of wages and
6 equity.

7 53. Uplift, CEO Barth and president Soderbery conducted themselves maliciously,
8 fraudulently, oppressively, and in bad faith with respect to Ms. Carrington. Therefore, Ms.
9 Carrington is entitled to an award of exemplary and punitive damages against UpLift, CEO Barth
10 and president Soderbery in an amount to be determined at trial.

11 **THIRD CAUSE OF ACTION**

12 **Wrongful Termination in Violation of Public Policy**

13 **(Against UpLift)**

14 54. Plaintiff realleges and incorporates by reference paragraphs 1 through 53 above.

15 55. Ms. Carrington and UpLift were in an employment relationship at the times she
16 complained to UpLift about its violations of the law.

17 56. It is wrongful termination in violation of public policy in California to fire an
18 employee because she complained to her employer about the employer's violations of the law,
19 including, without limitation, the employer's violations of the federal and state securities laws
20 and the employer's violations of California's laws against sex harassment and sex
21 discrimination. California has a strong public policy against permitting such terminations of
22 employment.

23 57. As explained above, UpLift terminated Ms. Carrington's employment because,
24 she complained of UpLift's securities fraud, UpLift's violation of Reg E and UpLift's sex
25 discrimination and harassment. Among other statutes and regulations, securities fraud is
26 prohibited by § 10 of the United States Securities Act of 1934, 17 C.F.R. 240.10b-5 and
27 California Corporations Code § 25401, et seq. and its implementing regulations. Among other
28 statutes and regulations, violations of Reg. E are prohibited by the EFTA. Among other statutes

1 and regulations, sex discrimination and harassment in employment is prohibited by California
2 Constitution, Art. I, § 8 and California Government Code § 12940, et seq. All of the foregoing
3 implicate substantial California public policies.

4 58. UpLift's wrongful termination of Ms. Carrington's employment has caused Ms.
5 Carrington damages in an amount to be proven at trial, which amount includes the loss of wages
6 and equity.

7 59. UpLift conducted itself maliciously, fraudulently, oppressively, and in bad faith
8 with respect to Ms. Carrington. Therefore, Ms. Carrington is entitled to an award of exemplary
9 and punitive damages against UpLift in an amount to be determined at trial.

10 **FOURTH CAUSE OF ACTION**

11 **Retaliation – Violation of California Government Code § 12940(h), et seq.**

12 **(Against UpLift)**

13 60. Plaintiff realleges and incorporates by reference paragraphs 1 through 59 above.

14 61. As described more fully above, UpLift retaliated against Ms. Carrington and
15 terminated Ms. Carrington's employment because Ms. Carrington complained of UpLift's sex
16 discrimination and hostile work environment, UpLift's violation of Reg E and UpLift's
17 commission of securities fraud. UpLift's retaliation violated California law, including the
18 proscriptions against retaliation in California's Fair Employment and Housing Act.

19 62. A DFEH right-to-sue letter is attached as Exhibit 1.

20 63. UpLift's wrongful conduct has caused Ms. Carrington damages in an amount to
21 be proven at trial, which amount includes the loss of salary and equity.

22 64. UpLift conducted itself maliciously, fraudulently, oppressively, and in bad faith
23 with respect to Ms. Carrington. Therefore, Ms. Carrington is entitled to an award of exemplary
24 and punitive damages against UpLift in an amount to be determined at trial.

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FIFTH CAUSE OF ACTION

Fraud

(Against UpLift)

65. Plaintiff realleges and incorporates by reference paragraphs 1 through 64 above.

66. As described more fully above, president Soderbery repeatedly assured Ms. Carrington, including after employment commenced, that her salary would be increased to \$250,000 immediately after the closing of UpLift's Series B Financing. UpLift's Series B Financing closed in December 2017, but UpLift never raised Ms. Carrington's salary.

67. President Soderbery's repeated representations were false when made. Driven by discriminatory, harassing and retaliatory animus, president Soderbery knew that the repeated representations he made to Ms. Carrington regarding the increase in her salary were false when made.

68. Ms. Carrington reasonably relied on president Soderbery's representation because he was a senior executive at UpLift.

69. President Soderbery knew that Ms. Carrington was relying on his false representations and he intended that she do so.

70. As a result of Ms. Carrington's reliance on president Soderbery's representations during her employment, Ms. Carrington did not look for alternative employment, but instead remained employed at UpLift.

71. UpLift's wrongful conduct has caused Ms. Carrington damages in an amount to be proven at trial, which amount includes the loss of wages and equity.

72. UpLift conducted itself maliciously, fraudulently, oppressively, and in bad faith with respect to Ms. Carrington. Therefore, Ms. Carrington is entitled to an award of exemplary and punitive damages against UpLift in an amount to be determined at trial.

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SIXTH CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing

(Against UpLift)

73. Plaintiff realleges and incorporates by reference paragraphs 1 through 72 above.

74. Every California contract, including Ms. Carrington's employment contract and stock options contracts, contains an implied covenant of good faith and fair dealing.

75. UpLift breached the implied covenant of good faith and fair dealing in UpLift's written and oral contracts, including its employment contracts and equity contracts, with Ms. Carrington. The following actions are intertwined with and evidence the breaches of the covenant of good faith and fair dealing, and are examples of breaches and/or violations that constitute more than the breach of the oral and written contracts themselves:

- a. UpLift unfairly and unlawfully terminated Ms. Carrington's employment in violation of the law.
- b. UpLift unfairly and illegally discriminated against Ms. Carrington because of her sex.
- c. UpLift unfairly and illegally forced Ms. Carrington to work in a hostile work environment.
- d. UpLift wrongfully terminated Ms. Carrington's employment to avoid delivering to Ms. Carrington additional UpLift Common Stock. At some point after Ms. Carrington became an UpLift employee, CEO Barth decided he did not want Ms. Carrington to own any shares of UpLift Common Stock.
- e. UpLift unfairly defrauded Ms. Carrington out of a \$250,000/year salary.
- f. UpLift wrongfully terminated Ms. Carrington's employment for the wrongful reasons set forth above.

76. As a result of UpLift's breach of the implied covenant of good faith and fair dealing, Ms. Carrington has been damaged in an amount to be proven at trial, which amount

1 includes, without limitation, the loss of wages and equity.

2 **JURY TRIAL DEMAND**

3 77. Plaintiff Noha Carrington demands a trial by jury.

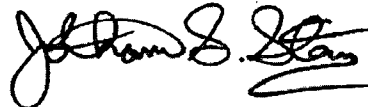
4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, plaintiff Noha Carrington prays for judgment against defendants
6 UpLift, Inc., Brian Barth, Robert Soderbery and Does 1–100 as follows as follows:

- 7 1. For special and general damages according to proof;
8 2. For contract and other damages according to proof;
9 3. For tort damages for, among other things, fraud;
10 4. For exemplary and punitive damages;
11 5. For pre-judgment interest;
12 6. For post-judgment interest;
13 7. For attorneys' fees, expenses, and costs of suit; and
14 8. For all other relief as this Court deems just and proper.

15 Respectfully submitted,

16 **LAW OFFICES OF JOTHAM S. STEIN P.C.**

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19 Date: January 30, 2019

20 By: _____
Jotham S. Stein, Esq.

21 Attorneys for plaintiff Noha Carrington

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EXHIBIT 1

(DFEH Right-to-Sue Letter)



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: con.act.center@dfef.ca.gov

January 14, 2019

Noha Carrington
800 Hermosa Way
Menlo Park, California 94025

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 201901-04781214
Right to Sue: Carrington / UpLift, Inc. et al.

Dear Noha Carrington,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 14, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing